

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-753

JOHN EDWARD WILLIAMS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered December 10, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. JN 2005-1953]

HONORABLE TJUANA BYRD,
SPECIAL JUDGE

AFFIRMED

LARRY VAUGHT, Judge

Appellant John Williams brings this appeal from the order of the Pulaski County Circuit Court terminating his parental rights to his son, J.W., and his daughter, T.W. He argues that the circuit court erred in finding that there was sufficient evidence to support termination of his parental rights, both as to whether the termination is in the children's best interest and as to grounds for termination. We affirm.

The children came into the custody of the Department of Human Services (DHS) on September 15, 2005, after Williams had left the children with their aunt and DHS was asked to take custody from the aunt.¹ According to the affidavit filed in support of DHS's petition for emergency custody, Williams was homeless and tested positive for both marijuana and cocaine. Williams was also alleged to have admitted to the case worker that he was unstable.

¹The mother of the children is Latasha Bracks. Her parental rights were also terminated. However, she did not appeal.

An emergency order granting DHS custody was entered on September 19, 2005. Probable cause for the children's removal was later found.

An adjudication hearing was held on November 22, 2005. The court found that the children were dependent-neglected based on the parties' stipulation. The court established a goal of reunification, and a concurrent goal of adoption. Williams was ordered to cooperate with DHS and follow the case plan; to submit to a psychological evaluation; to attend individual and family counseling; to not use or possess controlled substances; to submit to random drug screens; to obtain a drug assessment and follow the recommendations, including residential treatment; to obtain and maintain stable housing and employment; to complete parenting classes; and to keep DHS informed of his contact information.

A review hearing was held on March 1, 2006. The circuit court continued custody of the children with DHS. The court noted that Williams had complied with the case plan to that point by obtaining an apartment and having all of his drug screens test negative. The court noted that Williams had made some progress towards alleviating the causes of the children's removal. The court noted its concern that Williams was living with, and planning to marry, a woman who had recently been released from prison on drug charges. In addition to the prior orders, Williams was also ordered to attend AA/NA meetings twice a month until he could enter a residential treatment facility.

A second review hearing was held on June 15, 2006. The children remained in DHS's custody because Williams had only partially complied with the case plan and the court's orders. Specifically, he had entered and left two drug-treatment facilities without completing

the programs. He had lost his apartment and was living with his mother. He had not maintained contact with DHS or made himself available for random drug testing. He had completed some of the parenting classes and therapy sessions ordered by the court but had missed some visitations with the children. Williams was found to have made minimal progress towards the goal of reunification.

At a September 14, 2006 permanency-planning hearing, the court found that Williams was complying with the case plan and making significant, measurable progress towards reunification. Specifically, Williams had completed in-patient drug treatment, was attending out-patient drug treatment, attending therapy, visiting with his children, and testing negative on his drug screens. The court noted that reunification should occur within four months and allowed Williams to have weekend visits with the children.

A fifteen-month review hearing was held on December 13, 2006. Because Williams's visitation had gone well, the court authorized a thirty-day trial placement. An agreed order returning the children to Williams's custody was entered on January 16, 2007. All prior orders were to remain in effect and Williams was ordered to maintain an adequate and stable home for the children and to ensure that their needs were met.

At an April 12, 2007 review hearing, the circuit court noted that it was not happy because Williams and the children had moved to California without permission from either the court or DHS. Nevertheless, the court was convinced that the children were doing well. Williams was found to have complied with the case plan, and DHS had requested that the California authorities open a protective-services case.

On September 4, 2007, DHS filed a petition for emergency custody of the children. According to the affidavit in support of the petition, Williams and the children were living in a one-bedroom apartment with other extended family members. The affidavit also asserted that Williams had been uncooperative with DHS's California counterpart agency. Finally, the affidavit stated that Williams was sleeping during the day and drinking until late at night. The court entered an emergency order placing the children in DHS's custody on September 5, 2007.

On January 24, 2008, a permanency-planning hearing was held, and the court found the case was moving toward the goal of termination and adoption. Further, the court found that Williams had failed to comply with the case plan in that he was not providing the children with adequate housing, he had not submitted proof of his attendance at AA/NA meetings, and had only visited the children one time since their return to Arkansas.

On February 19, 2008, DHS filed a petition seeking to terminate Williams's parental rights, alleging that the children had been out of the home for twelve months; that other factors had arisen since the original petition for dependency-neglect that demonstrated that the return of the children was contrary to their health, safety, and welfare and that Williams manifested incapacity or indifference to remedy or rehabilitate; and that Williams had abandoned the children.

The termination hearing was held on April 18, 2008. Joyce Taylor, the DHS worker assigned to the case, testified that the allegations in the original petition were that Williams was using drugs and that there was unstable housing. She recounted some of the history of

the case, including that Williams entered two treatment programs but failed to complete either. Williams also failed to submit to drug screens. Taylor said that Williams and the children left for California without permission of the court in February 2007. According to Taylor, Williams and the children were living in a one-bedroom apartment with his mother and brother. After the children were removed from Williams's custody, he returned to Arkansas for approximately one month before entering a California treatment facility. Taylor also said that Williams failed to cooperate with the California authorities. She recommended that Williams's parental rights be terminated.

On cross-examination, Taylor said that she believed that Williams genuinely wanted to overcome his addiction problem. She also said that other family members were interested in being considered as a placement for the children but that the case had progressed so long that she opposed the placement. She also reported that the children's therapist was concerned about the children having stability.

Kasheena Walls, an adoption specialist, testified that the children were adoptable and that there were thirty families, including the foster parents, listed as matches for the children. Rachael Monroe, the foster mother, confirmed that she wanted to adopt the children. She added that the children talked about their parents more when they first came into her care but now it was only once in a while that they mentioned the parents.

The court ruled from the bench and terminated Williams's parental rights. The court found three grounds for termination had been proven. The court found that DHS had an appropriate plan for the children and that there was a very good likelihood that the children

would be adopted. The court also found that DHS had made reasonable efforts to provide services. The court's written order was entered on April 18, 2008. This appeal followed.

Williams's sole point on appeal is that the circuit court erred in finding sufficient evidence to support termination of his parental rights. He divides the argument into two parts, addressing both whether the termination was in the children's best interests and whether grounds for the termination were proven.

We review termination of parental rights cases de novo. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

Williams first argues that the circuit court erred in finding that the termination of his parental rights is in the children's best interest. He argues that the court erred in finding that the children would be at risk of potential harm if they were returned to his custody. The plain language of Ark. Code Ann. § 9-27-341 (Repl. 2008) provides that the court must find by

clear and convincing evidence that termination is in the children's best interests, giving consideration to the risk of potential harm. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). The risk of potential harm is but one factor for the court to consider in its analysis. *Id.* There is no requirement that every factor considered be established by clear and convincing evidence; rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Furthermore, the supreme court has directed that the harm analysis be conducted in broad terms, including the harm the child suffers from the lack of stability in a permanent home. *See Bearden v. Ark. Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). Williams concedes that the children were adoptable. Therefore, the question becomes whether there is potential harm to the children from maintaining contact with him.

Williams's failure to secure safe and appropriate housing or stable income is contrary to the children's well-being and best interest. *Carroll, supra*. At the time the children entered foster care in September 2005, Williams could not provide them with a proper home. He also had several other residences during the course of the case, including living with his mother. Also, while in California, Williams and the children were living in a one-bedroom apartment with several other family members. This could hardly be called a proper or stable environment for the children. A stable home is one of a child's most basic needs. *Latham v. Ark. Dep't of Health & Human Servs.*, 99 Ark. App. 25, 256 S.W.3d 543 (2007). It also goes to establish that

one of the factors that existed at the time the children were removed had not been corrected at the time of the termination hearing.

A parent's continued use of illegal drugs is contrary to the children's best interest. *Carroll, supra*. Williams argues that there was no proof that he was still using drugs and that his November 2007 drug test was negative. However, at the time the children were removed in September 2007 and again at the time of the termination hearing, Williams was in a substance-abuse treatment facility. Moreover, he had attended, but not completed two other treatment programs. He had not submitted to all of the drug tests or attended AA/NA meetings as ordered by the circuit court. The failure to comply with the court's orders also shows potential harm to the children. See *Jefferson v. Ark. Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004). It was the concern that Williams had relapsed that led, in part, to the removal of the children in September 2007. We cannot say that the circuit court was clearly erroneous in finding potential harm to the children if they were returned to Williams's custody.

Finally, Williams argues that the circuit court erred in finding grounds for termination. As noted above, the court found three grounds had been proven. Only one ground is necessary. *Hall v. Ark. Dep't of Human Servs.*, 101 Ark. App. 417, __ S.W.3d __ (2008); *Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007). We affirm the circuit court on the basis that the children had been adjudicated dependent-neglected, had remained out of the home for more than twelve months, and, despite services from DHS, the conditions that caused the removal had not been corrected. The children were

removed in September 2005 and adjudicated dependent-neglected in November 2005. The children were in foster care for twenty-three of the thirty-two months preceding the termination hearing. There is no requirement that the twelve-month period be consecutive or in the same case. *Johnson v. Ark. Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002); *see also* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(b) (Repl. 2008). As discussed above, the conditions that led to the children's removal, drug use and lack of proper housing, had not yet been remedied. Therefore, we cannot say that the circuit court was clearly erroneous in finding that this ground had been proven.

Affirmed.

MARSHALL and BAKER, JJ., agree.